



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5414 (as passed by the House)
Sponsor: Representative Marc Shulman
House Committee: Appropriations
Senate Committee: Judiciary

Date Completed: 9-21-04

CONTENT

The bill would amend the Social Welfare Act to do all of the following:

- **Require a medical assistance (Medicaid) recipient or his or her legal counsel to notify the "state department" (the Department of Community Health (DCH)) and, if appropriate, a "Medicaid-contracted health plan", when filing an action in which the DCH or health plan could have a right to recover expenses paid under the Act.**
- **Allow the DCH or a Medicaid-contracted health plan to file a legal action against a Medicaid recipient or his or her legal counsel, if the recipient or counsel did not notify the DCH or health plan.**
- **Give the DCH and a Medicaid-contracted health plan, respectively, first and second priority against the proceeds of the net recovery from a settlement or judgment in an action in which notice was provided.**
- **Require the DCH and a Medicaid-contracted health plan to recover the full cost of expenses paid under the Act, unless they agreed to accept a smaller amount.**
- **Provide that, if an individual would recover less against the proceeds of the net recovery than the expenses paid under the Act, the DCH or health plan, the individual, and his or her legal counsel would share the net recovery equally.**

(Under the Act, "state department" generally means the Family Independence Agency, but Executive Reorganization Order 1996-1 transferred to the DCH all "statutory authority, powers, duties, functions, and responsibilities" of the Medicaid program.)

"Medicaid-contracted health plan" would mean a managed care organization with which the DCH contracted to provide or arrange for the delivery of comprehensive health care services, as authorized under the Act.

Notification

The Act provides that the DCH is subrogated to any right of recovery that a patient may have for the cost of hospitalization, pharmaceutical services, physician services, nursing services, and other medical services not exceeding the amount of funds the DCH spent for the care and treatment of the patient. The patient or other person acting in the patient's behalf must execute and deliver an assignment of claim or other authorization, as necessary to secure the right of recovery to the DCH. ("Subrogation" refers to the substitution of one person in the place of another with respect to a lawful claim, demand, or right. Under these provisions, the DCH, rather than the patient, has the right to recover the cost of medical services from a third party.)

The bill would require an individual receiving Medicaid under the Act, or his or her legal counsel, to notify the DCH when filing an action in which the DCH may have a right to recover expenses paid under the Act. If the individual were enrolled in a Medicaid-contracted health plan, the individual or his or her legal counsel also would have to notify the health plan.

If a legal action in which the DCH, a Medicaid-contracted health plan, or both had a right to recover expenses paid under the Act were filed and settled after the bill's effective date without notice to the DCH or the Medicaid-contracted health plan, the DCH or the health plan could file a legal action against the individual or his or her legal counsel, or both, to recover expenses paid under the Act.

Recovery Priority & Distribution

The DCH would have first priority against the proceeds of the net recovery from the settlement or judgment in an action in which notice was provided pursuant to the bill. The DCH and a Medicaid-contracted health plan would have to recover the full cost of expenses paid under the Act, unless the DCH or the health plan agreed to accept an amount less than the full amount.

If the individual would recover less against the proceeds of the net recovery than the expenses paid under the Act, the DCH or Medicaid-contracted health plan, the individual, and his or her legal counsel would have to share pro rata in the proceeds with each receiving one-third of the net recovery. ("Net recovery" would mean the total settlement or judgment, less the costs and fees incurred by or on behalf of the individual who obtained the settlement or judgment.)

MCL 400.106

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

If a patient received medical services paid for all or in part by Medicaid, and the services related to a potential court case, that patient would have to inform the State of the lawsuit. The State then could recover any Medicaid costs related to the lawsuit award or settlement. The FY 2004-05 Department of Community Health budget assumes approximately \$7.6 million gross; \$3.3 million GF/GP savings from passage of the bill.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.